

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

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Calling Party Pays Service Option in the
Commercial Mobile Radio Services

) WT Docket No. 97-207
)

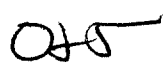
COMMENTS OF AT&T WIRELESS SERVICES INC.

AT&T Wireless Services Inc. ("AT&T"), by its attorneys, hereby submits its comments on the Notice of Inquiry issued in the above-captioned proceeding.^{1/} The Commission is seeking information regarding the calling party pays ("CPP") service option and whether wider availability of CPP would enable CMRS providers to more readily compete with wireline services provided by local exchange carriers ("LECs"). As a matter ancillary to the "rates for commercial mobile service," CPP is within the Commission's plenary jurisdiction over CMRS. Oversight of CPP also falls within the Commission's broad authority to regulate interconnection between CMRS providers and local exchange carriers.

While AT&T believes that CPP can be an important tool for encouraging the deployment of wireless services, it is not necessary for the Commission to adopt specific rules to promote the wider availability of CPP. The Commission should leave the decision whether and how to implement CPP to the competitive CMRS marketplace, which will ensure that providers respond to customer demand for a CPP service option. The Commission should, however, make clear that it will use its authority as necessary to prevent the erection of governmental or private barriers to the deployment of CPP.

^{1/} In the Matter of Calling Party Pays Service Option in the Commercial Mobile Radio Services, WT Docket No. 97-207, Notice of Inquiry, FCC 97-341 (rel. Oct. 23, 1997) ("Notice").

AT&T WIRELESS SERVICES INC.
12/16/97



I. CALLING PARTY PAYS CAN BE AN IMPORTANT TOOL FOR ENCOURAGING THE DEPLOYMENT OF WIRELESS SERVICES

As CTIA has suggested, wider availability of the CPP service option could be beneficial to both CMRS customers and providers.^{2/} CPP can provide CMRS customers with a means of better controlling their costs, while still allowing them to be available to receive incoming calls. By requiring the party placing the call to pay the associated charges, CPP could encourage subscribers to distribute their mobile phone numbers more widely because they will not have to pay for unwanted calls. Providing these benefits to CMRS customers would ultimately benefit CMRS providers, if overall usage of and subscribership to CMRS increase.

In the Notice, the Commission seeks specific information on the current availability of CPP and the level of consumer demand for it. AT&T has limited experience with CPP and therefore does not have the type of detailed market information that the Commission is seeking. The nascent stage of CPP development is not evidence of market failure, however. AT&T, for instance, is developing several alternative options for making CPP available to its subscribers, and market trials of CPP in Boise, Idaho and Phoenix, Arizona have shown promising results. AT&T has elected to deploy CPP gradually, however, because of the costs and technological limitations of the current options for implementing CPP and uncertainty about customer demand and public acceptance for CPP.

The Commission appears to presume that implementation of this service would require CMRS providers to reach agreement with LECs.^{3/} There may, however, be other techniques to

^{2/} CTIA Service Report, The Who, What and Why of "Calling Party Pays," July 4, 1997, at § 2.0.

^{3/} For example, the Commission states that LECs "must be willing and able to provide the (continued on next page)

implement CPP or equivalent billing arrangements that do not require a direct relationship between LECs and CMRS providers. Any actions the Commission takes in response to the Notice should not foreclose these alternative arrangements or imply that there is only one way in which CPP can be implemented. Given the competitive market conditions in the CMRS industry, there is no reason for the Commission to mandate CPP or a particular means of implementing CPP arrangements. With the increasing number of CMRS providers, the marketplace will ensure that providers respond to customer demand for a CPP service option.^{4/}

II. THE COMMISSION HAS AMPLE AUTHORITY TO PREVENT PRIVATE OR GOVERNMENTAL BARRIERS TO THE IMPLEMENTATION OF CALLING PARTY PAYS

Congress has conferred on the Commission broad authority to promote the continued growth and development of CMRS. Congress established a Federal regulatory framework for CMRS and preempted state rate and entry regulation in order to “foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an

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CMRS carrier with this billing service or sufficient information for the CMRS provider to bill the calling party directly.” Notice at ¶ 3.

^{4/} As the Commission itself has found, the CMRS industry is subject to substantial competition. See, e.g., Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1411, 1478 at ¶ 175 (1994) (finding sufficient competition in cellular marketplace to justify detariffing cellular rates); In re Petition of California to Retain Regulatory Authority Over Intrastate Cellular Service Rates, 10 FCC Rcd 7486 (1995) (rejecting petition of California PUC to continue to regulate intrastate cellular rates as market conditions adequately protect consumers against unjust, unreasonable, or unjustly or unreasonably discriminatory rates); In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, FCC 97-75 at 6 (rel. March 25, 1997) (recognizing that “the CMRS market has continued to undergo major changes that have resulted in increased competition and convergence among CMRS services”).

integral part of the national telecommunications infrastructure.”^{5/} In furtherance of this broad statutory goal, the Commission clearly can prevent restrictive practices that would frustrate the implementation of CPP.^{6/}

As the Commission itself has observed, moreover, the United States Court of Appeals for the Eighth Circuit concluded that the agency has broad authority to order LECs to interconnect with CMRS providers and to issue rules of special concern to wireless carriers.^{7/} Appropriate arrangements for billing and access to network elements are essential to the fulfillment of the incumbent LECs’ obligations to interconnect with CMRS providers. Billing arrangements applicable to shared traffic are a standard part of many interconnection agreements between CMRS providers and incumbent LECs. Indeed, the provision by incumbent LECs of billing and other information to CMRS providers to facilitate the provision of CPP is closely analogous to the access to operations support systems ordered by the Commission pursuant to section 251(c)(3) of the Communications Act.^{8/}

Likewise, CPP implemented through other mechanisms, such as a special dialing code, may have characteristics similar to number portability techniques that the Commission has

^{5/} H.R. Rep. No. 103-111 at 260 (1993).

^{6/} That authority includes, but is not limited to, matters related to LEC-CMRS interconnection. See 47 U.S.C. § 332(c)(1)(B).

^{7/} Iowa Utilities Board v. FCC, 120 F.3d 753, 800 n.21 (8th Cir. 1997).

^{8/} Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 15763 at ¶ 516 (“Local Competition Order”); see also 120 F.3d at 808-810.

already mandated pursuant to sections 251(b)(2) and 251(e) of the Communications Act.^{9/} As in the case of number portability, implementation of CPP may require that a LEC switch query a database to determine where to route the call and to forward the appropriate billing information.

Consistent with these well-established policies, the Commission can and should enforce a LEC's obligation to provide adequate billing and associated information necessary for CPP. The Commission should make clear that it will step in to prevent an incumbent LEC from impeding efforts by CMRS providers to implement CPP as they choose. LECs should not be permitted to use their bottleneck control over local exchange facilities to impose access charges for local calls, block numbers, or refuse to cooperate in sending or receiving the information needed for billing.^{10/} Moreover, even where CPP has been implemented, LECs must continue to fulfill their reciprocal compensation requirements under section 251((b)(5). The Commission can and

^{9/} 47 U.S.C. §§ 251(b)(2), 251(e). See Telephone Number Portability, CC Docket No. 95-116, RM 8535, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-286 at ¶ 100 (rel. July 2, 1996) (requiring carriers to provide any information necessary to provide number portability); Second Report and Order, FCC 97-289 at ¶ 73 (rel. Aug. 18, 1997) (requiring certain carriers to either query the number portability database themselves or arrange with another entity to perform database queries on their behalf).

^{10/} The Commission has frequently intervened to prevent LECs from using their control of local bottleneck facilities to discriminate against competitors. See, e.g., Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services; Implementation of Section 610(d) of the Telecommunications Act of 1996, WT Docket No. 96-162, Report and Order, FCC 97-352 at ¶¶ 29, 32 (rel. Oct. 3, 1997) (establishing regulatory safeguards for LEC provision of in-region CMRS); Local Competition Order, 11 FCC Rcd at 15506, ¶ 4 (adopting rules to open local exchange and exchange access markets to competition); Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies, Report and Order, 95 FCC 2d 1117, 1137 (1983) (establishing structural separation requirements for the provision of enhanced services and consumer premises equipment by the Bell Operating Companies).

should act to ensure that LECs are not able to prevent CMRS providers from implementing CPP through the mechanism they think best.

The Commission also has authority over CPP through its plenary authority over the “rates . . . for commercial mobile services.”^{11/} This authority is sufficiently broad to encompass the nature and type of charges imposed for CMRS, including the manner in which these charges are collected. While States retain general jurisdiction over consumer protection issues under section 332(c)(3) of the Communications Act,^{12/} the Commission retains a strong interest in ensuring that the provision of CPP is not regulated in a fashion that frustrates the national uniform treatment of wireless services mandated by Congress.^{13/} The Commission should prescribe uniform consumer protection rules to ensure that States do not impede the implementation of CPP by adopting inconsistent rules, which would have an adverse effect on wireless carriers that often serve multiple States with a single system. Once the Commission has adopted uniform rules, some State role in implementation may be appropriate.^{14/}

^{11/} See 47 U.S.C. § 332(c)(3)(A).

^{12/} 47 U.S.C. § 332(c)(3); H.R. Rep. No. 103-111 at 261 (explaining that the “terms and conditions” of commercial mobile service that States may regulate include such matters as customer billing information and practices, billing disputes and “other consumer protection matters”).

^{13/} See H.R. Rep. No. 103-111 at 260 (preempting state rate and entry regulation of CMRS); see also Local Competition Order at ¶¶ 861, 1025 (finding that state commissions have treated CMRS providers in discriminatory manner with respect to terms and conditions of interconnection and prohibiting state regulations that permit non-cost based discriminatory treatment).

^{14/} Cf. The Use of N11 Codes and Other Abbreviated Dialing Arrangements 12 FCC Rcd 5572 at ¶2 (1997) (allowing States to continue to perform certain N11 code administrative functions while adopting national rules for other abbreviated dialing arrangements); Implementation of the (continued on next page)

CONCLUSION

The wider availability of CPP could be beneficial to both CMRS subscribers and providers. While the Commission has jurisdiction over CPP, it should decline to exercise its authority at the present time to impose any new obligations on CMRS providers. Instead, the implementation of CPP should be left to providers who will be driven by the competitive CMRS market to provide CPP, using various techniques, when there is sufficient demand. The Commission nevertheless should make clear its intent to ensure that LECs do not attempt to use their bottleneck control of local facilities to prevent the implementation of CPP. The Commission should also preclude States from imposing divergent, burdensome regulations on CPP in the name of "consumer protection."

Respectfully submitted,

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Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19516 at ¶ 281 (1996) (authorizing States to oversee the introduction of new area codes while setting out specific rules with respect to how area code overlays could be implemented).

CERTIFICATE OF SERVICE


I, Michelle Mundt, hereby certify that on this 16th day of December, 1997, I caused copies of the foregoing "Comments of AT&T Wireless Services, Inc." to be sent to the following either first class mail, postage pre-paid, or by hand delivery, by messenger(*) to the following:

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